DEC 31 1980

No. 80-897.

In the
Supreme Court of the United States.

OCTOBER TERM, 1980.

DAVID A. YOUNG, SR.,
APPELLANT,

v.

JOSHUA PARK,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF RHODE ISLAND.

Motion to Dismiss.

ROBERT D. PARRILLO,
HANSON, CURRAN & PARKS,
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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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Appellee, pursuant to Rule 16.1 of the Rules of the Supreme Court of the United States, moves to dismiss the appeal on the ground that there is no issue of federal law drawn in question. In the alternative, if the Court considers the appeal to involve questions of federal law, appellee moves to dismiss the appeal on the ground that the questions presented are so insubstantial as to require no further argument.

This is a direct appeal from the final judgment and decision of the Rhode Island Supreme Court of July 21, 1980 denying and dismissing appellant's appeal to that court.

Appellant's action is for malpractice and alleges negligent diagnosis and treatment by appellee as well as failure by appellee to obtain appellant's informed consent to treatment.

During the conduct of the trial appellant dismissed his attorney. At the conclusion of the jury trial the trial justice directed a verdict for appellee on the negligence count and the jury returned a verdict for appellee on the informed consent count.

Appellant prosecuted an appeal to the Rhode Island Supreme Court, where appellant challenged the trial court's failure to appoint an expert witness to testify in appellant's behalf and the granting of a directed verdict for appellee. Appellant no longer pursues those issues in this Court and, had he done so, these are obviously non-federal grounds to which no appeal lies in this Court.

Appellant also challenged a variety of rulings made during the trial subsequent to the time he discharged his attorney. The challenged rulings were discretionary decisions concerning admissibility of evidence and the conduct of trial testimony. *Young* v. *Park*, R.I. , , 417 A.2d 889, 893-95 (1980). These rulings were said by appellant to have deprived him of a "full, fair, and impartial trial" which he claimed is conferred by R.I. Const., art. 1, § 5, entitled Remedies for wrongs — Right to justice. Contrary to appellant's assertion in his Jurisdictional Statement at 19, no mention of any federal right was made before the Rhode Island Supreme Court.

Appellant now contends that his Fourteenth Amendment due process rights were denied by these evidentiary rulings. Inasmuch as the purported federal issues now being raised were not brought before the state court, this appeal is not properly before this Court. *Cardinale* v. *Louisiana*, 394 U.S. 437, 438, 439 (1969).

It is questionable that evidentiary rulings made by the trial justice rise to the level of being considered federal due process issues. The state court judgment rests on adequate and independent state grounds where the state appellate court's review is of discretionary evidentiary rulings made by a trial

justice under state law. This Court should, therefore, refuse jurisdiction. *Herb* v. *Pitcairn*, 324 U.S. 117, 125 (1945). Assuming that such evidentiary rulings are of Fourteenth Amendment magnitude, they are so frivolous and insubstantial as not to merit consideration by this Court.

Wherefore, appellee submits that no federal issue is drawn in question and should the issues presented be considered to be federal issues, they are so insubstantial as to require no further argument and appellee respectfully moves to dismiss this appeal.

Respectfully submitted,

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